

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ANGIODYNAMICS, INC.,

Plaintiff,

vs.

BIOLITEC, INC., BIOLITEC AG, BIOMED
TECHNOLOGY HOLDINGS LTD. and
WOLFGANG NEUBERGER,

Defendants

C.A. No. 09-cv-30181-MAP

MOTION FOR RECUSAL OR DISQUALIFICATION

Defendants Biolitec AG, Biomed Technology Holdings, Ltd. and Wolfgang Neuberger move pursuant to 28 U.S.C. § 455(a) for recusal or disqualification of the Hon. Judge Michael A. Ponsor because his statements and rulings in reaction to the completion of Biolitec AG's downstream merger on March 15, 2015 has raised reasonable questions regarding his impartiality. In particular, Judge Ponsor's statements and rulings establish that he considers the merger "to be a personal affront to his authority" such that a reasonable person would doubt his impartiality." *Judicial Disqualification: An Analysis of Federal Law (Second Edition)*, Federal Judicial Center (2010) (Exhibit 1) [ECF 274-1] at 34 (citing *United States v. Anwar*, 53 F.3d 568, 573 (3d Cir. 1995)).

In support of this motion, defendants submit the accompanying supporting memorandum of law. In addition, defendants rely on, and designate as part of the record on this motion, the declarations, exhibits, memoranda submitted in support of, or in opposition to, the following motions as well as all hearing transcripts and decisions:

- (i) Plaintiffs' Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction [ECF 109];

- (ii) Emergency Motion for Reconsideration of Preliminary Injunction [ECF 144];
- (iii) Emergency Motion to Vacate Preliminary Injunction [ECF 190];
- (iv) Emergency Motion for Contempt [ECF 205];
- (v) Emergency Motion to Stay Motion for Contempt [ECF 206];
- (vi) Motion to Modify April 3, 2013 Order [ECF 236];
- (vii) Emergency Motion Seeking Leave for Wolfgang Neuberger to Appear Via Video-Link at the April 10, 2013 hearing [ECF 241] and
- (viii) Amended Motion for Relief from Contempt Order [ECF 268]

For the reasons stated in the supporting memorandum, the Court should recuse or disqualify Judge Ponsor and assign this case to another judge.

Dated: May 15, 2013

THE GRIFFITH FIRM

/s/ Edward Griffith

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Counsel for defendants Biolitec AG, Biomed Technology Holdings, Ltd. and Wolfgang Neuberger

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 15th day of May, 2012.

/s/ Edward Griffith

Edward Griffith